



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

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ATTORNEY GENERAL**

March 27, 1975

The Honorable Bill Clayton
State of Texas House of
Representatives
Austin, Texas

Letter Advisory No. 90

Re: Constitutionality of
HB 570 which is designed
to cancel Texas Opportunity
Plan Loans of students who
after graduation, work for
certain state agencies.

Dear Speaker Clayton:

You have requested our opinion concerning the constitutionality of House Bill 570 which would amend chapter 52 of the Education Code by adding a section 52.40, which would provide in part:

(a) The [Coordinating Board, Texas College and University System] may cancel the repayment of a loan received by a student who earns a doctorate in medicine or psychology and who is employed by the Texas Youth Council, State Department of Public Welfare, or Department of Mental Health and Mental Retardation prior to the date on which repayment of the loan is to commence.

The bill further provides for cancellations in amounts which vary with the duration of service in the various institutions. The loans involved are those authorized by article 3, section 50b and 50b-1 of the Texas Constitution and drawn from the Texas Opportunity Plan Fund. Tex. Educ. Code, secs. 52.11(c), 52.16, 52.32.

Specifically you ask whether the bill would contravene article 3, section 55 of the Texas Constitution or any other of its provisions.

Article 3, section 55 provides in part:

The Legislature shall have no power to release or extinguish, or to authorize the releasing or extinguishing, in whole or in part, the indebtedness, liability or obligation of any corporation or individual, to this State. . . .

The Supreme Court of Texas has construed section 55 to mean:

After the occurrence of events which under the law then existing give rise to an obligation on the part of an individual or corporation to the state, the Legislature has no power to release or diminish that obligation without consideration. State v. City of Austin, 331 S. W. 2d 7-7, 742 (Tex. Sup. 1960) (Emphasis added).

In Attorney General Opinion O-730 (1931), this Office stated that the release of certain obligations to the State would "clearly violate such constitutional provisions [including section 55] unless the State receives adequate consideration" (Emphasis added). See also, Morris v. Calvert, 329 S. W. 2d 117, 125 (Tex. Civ. App. --Austin 1959, writ ref. n. r. e.) (dissent by Justice Hughes).

The bill analysis of House Bill 570 states:

Due to a lack of competitive salaries and other benefits, many state agencies find difficulty in obtaining and holding qualified personnel.

In our view a doctor or psychologist gives adequate consideration for the partial or total release of his obligation by serving the State in his professional capacity. We see no meaningful distinction between higher salaries and this form of compensation for public service. Accordingly, it is our opinion that House Bill 570 does not violate article 3, section 55 of the Texas Constitution.

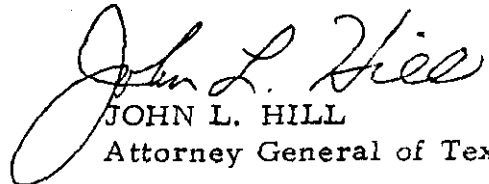
Article 3, section 51 of the Texas Constitution provides in part:

The Legislature shall have no power to make any grant or authorize the making of any grant of public moneys to any individual . . .

We held in Attorney General Opinion H-403 (1974) that section 51 is not violated when an expenditure is made "for a proper public purpose . . . if the consideration or benefit to the public is adequate." See also Davis v. City of Lubbock, 326 S. W. 2d 699 (Tex. Sup. 1959); State v. City of Austin, supra; Barrington v. Cokinos, 338 S. W. 2d 133 (Tex. Sup. 1960). We believe House Bill 570 to be clearly addressed to a proper public purpose. See Davis v. City of Taylor, 67 S. W. 2d 1033, 1034 (Tex. Sup. 1934); Attorney General Opinion H-403 (1974), H-257 (1974), H-109 (1973). As previously noted we also believe there to be adequate consideration in this instance. Consequently, in our opinion House Bill 570 does not violate article 3, section 51 of the Texas Constitution.

In our opinion, House Bill 570 does not violate the provisions of section 51 or 55 of article 3 of the Texas Constitution. You have not mentioned and we are not aware of any other provision of the Constitution which might be violated by the bill.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


DAVID M. KENDALL, First Assistant


C. ROBERT HEATH, Chairman
Opinion Committee

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